

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

GREGORY DEAN BARREN, SR.,

Plaintiff(s),

v.

TALEEN PANDUKHT,

Defendant(s).

Case No. 2:23-cv-01414-APG-NJK

ORDER

[Docket No. 1]

Pursuant to 28 U.S.C. § 1915 Plaintiff is proceeding in this action *pro se* and has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis*. Docket No. 1. Plaintiff also submitted a complaint. Docket No. 1-1.¹

I. In Forma Pauperis Application

Plaintiff filed the affidavit required by § 1915(a). Docket No. 1. Plaintiff has shown an inability to prepay fees and costs or give security for them. Accordingly, the request to proceed *in forma pauperis* will be granted pursuant to 28 U.S.C. § 1915(a). The Clerk's Office is further **INSTRUCTED** to file the complaint on the docket. The Court will now review Plaintiff's complaint.

II. Screening the Complaint

Upon granting an application to proceed *in forma pauperis*, courts additionally screen the complaint pursuant to § 1915(e). Federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2).

¹ The Court liberally construes the filings of *pro se* litigants. *Erickson v. Pardus*, 551 U.S. 89, 94 (2007).

1 When a court dismisses a complaint under § 1915, the plaintiff should be given leave to amend the
2 complaint with directions as to curing its deficiencies, unless it is clear from the face of the
3 complaint that the deficiencies could not be cured by amendment. *See Cato v. United States*, 70
4 F.3d 1103, 1106 (9th Cir. 1995).

5 Rule 12(b)(6) of the Federal Rules of Civil Procedure provides for dismissal of a complaint
6 for failure to state a claim upon which relief can be granted. Review under Rule 12(b)(6) is
7 essentially a ruling on a question of law. *See Chappel v. Lab. Corp. of Am.*, 232 F.3d 719, 723
8 (9th Cir. 2000). A properly pled complaint must provide a short and plain statement of the claim
9 showing that the pleader is entitled to relief. Fed.R.Civ.P. 8(a)(2); *Bell Atlantic Corp. v. Twombly*,
10 550 U.S. 544, 555 (2007). Although Rule 8 does not require detailed factual allegations, it
11 demands “more than labels and conclusions” or a “formulaic recitation of the elements of a cause
12 of action.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Papasan v. Allain*, 478 U.S. 265,
13 286 (1986)). The court must accept as true all well-pled factual allegations contained in the
14 complaint, but the same requirement does not apply to legal conclusions. *Iqbal*, 556 U.S. at 679.
15 Mere recitals of the elements of a cause of action, supported only by conclusory allegations, do
16 not suffice. *Id.* at 678. Secondly, where the claims in the complaint have not crossed the line from
17 conceivable to plausible, the complaint should be dismissed. *Twombly*, 550 U.S. at 570.
18 Allegations of a *pro se* complaint are held to less stringent standards than formal pleadings drafted
19 by lawyers. *Hebbe v. Pliler*, 627 F.3d 338, 342 & n.7 (9th Cir. 2010) (finding that liberal
20 construction of *pro se* pleadings is required after *Twombly* and *Iqbal*).

21 In addition, the Court has a duty to ensure that it has subject matter jurisdiction over the
22 dispute before it, an issue it may raise at any time during the proceedings. *See, e.g.*, Fed. R. Civ.
23 P. 12(h)(3). Federal courts are courts of limited jurisdiction and possess only that power
24 authorized by the Constitution and statute. *See Rasul v. Bush*, 542 U.S. 466, 489 (2004). “A
25 federal court is presumed to lack jurisdiction in a particular case unless the contrary affirmatively
26 appears.” *Stock West, Inc. v. Confederated Tribes of the Colville Reservation*, 873 F.2d 1221,
27 1225 (9th Cir. 1989). “The party asserting federal jurisdiction bears the burden of proving that the
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1 case is properly in federal court.” *McCauley v. Ford Motor Co.*, 264 F.3d 952, 957 (9th Cir. 2001)
 2 (citing *McNutt v. General Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936)).

3 In this case, Plaintiff’s complaint brings claims against Taleen Pandukht, a Chief Deputy
 4 District Attorney, for the alleged violation of his due process rights. See Docket No. 1 at 2-3.
 5 Plaintiff asks the Court to revoke, suspend, or vacate and remand the denial of his motion for writ
 6 of error *coram nobis* by the Eighth Judicial District Court in Clark County, Nevada. See *id.* at 4,
 7 13. However, under the *Rooker-Feldman* doctrine, “lower courts are precluded from exercising
 8 appellate jurisdiction over final state-court judgments.” *Lance v. Dennis*, 546 U.S. 459, 463
 9 (2006); see also *Kougasian v. TMSL, Inc.*, 359 F.3d 1136, 1140 (9th Cir. 2004) (quoting *Noel v.*
 10 *Hall*, 341 F.3d 1148, 1164 (9th Cir. 2004)) (“If a federal plaintiff asserts as a legal wrong an
 11 allegedly erroneous decision by a state court, and seeks relief from a state court judgment based
 12 on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal district court.”). Thus,
 13 Plaintiff may not seek relief in this Court from the state court’s judgment.

14 In light of the above, the Court lacks subject matter jurisdiction under the federal question
 15 provision. See 28 U.S.C. § 1343(a)(3). In addition, the complaint does not provide an alternative
 16 basis for this Court to hear Plaintiff’s state law claims. More specifically, the complaint does not
 17 provide a basis to exercise diversity jurisdiction in this matter, which requires that the parties be
 18 citizens of different states and the amount in controversy exceeds \$75,000. 28 U.S.C. § 1332(a).
 19 No showing has been made in the complaint as to the diverse citizenship of the parties.

20 Accordingly, the complaint does not establish federal subject matter jurisdiction. Although
 21 it appears unlikely that Plaintiff could cure the deficiencies identified herein, the Court will provide
 22 him one opportunity to do so if he believes he can.

23 **III. Conclusion**

24 Accordingly, **IT IS ORDERED** that:

- 25 1. Plaintiff’s request to proceed *in forma pauperis* is **GRANTED**. Plaintiff shall not be
 26 required to pay the filing fee. Plaintiff is permitted to maintain this action to conclusion
 27 without the necessity of prepayment of any additional fees or costs or the giving of a
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1 security therefor. This order granting leave to proceed *in forma pauperis* shall not
2 extend to the issuance and/or service of subpoenas at government expense.

3 2. The Clerk's Office is **INSTRUCTED** to file Plaintiff's complaint on the docket.

4 3. The complaint is **DISMISSED** with leave to amend. Plaintiff will have until **October**
5 **27, 2023**, to file an amended complaint, if the noted deficiencies can be corrected. If
6 Plaintiff chooses to amend the complaint, Plaintiff is informed that the Court cannot
7 refer to a prior pleading (i.e., the original complaint) in order to make the amended
8 complaint complete. This is because, as a general rule, an amended complaint
9 supersedes the original complaint. Local Rule 15-1(a) requires that an amended
10 complaint be complete in itself without reference to any prior pleading. Once a plaintiff
11 files an amended complaint, the original complaint no longer serves any function in the
12 case. Therefore, in an amended complaint, as in an original complaint, each claim and
13 the involvement of each Defendant must be sufficiently alleged.

14 4. **Failure to comply with this order will result in the recommended dismissal of this**
15 **case.**

16 IT IS SO ORDERED.

17 Dated: September 27, 2023

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20 Nancy J. Koppe
21 United States Magistrate Judge
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